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No. 80-1576

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

PRINCETON UNIVERSITY AND STATE OF NEW JERSEY,
Appellants,

v.

CHRIS SCHMID,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

BRIEF OF APPELLANT STATE OF NEW JERSEY

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July 13, 1981

QUESTIONS PRESENTED

1. Whether a private university has the right under the First, Fifth, and Fourteenth Amendments to determine without state interference what expressive activities by strangers it will permit on its campus and under what circumstances.

2. Whether the owner of private property, who was a party below, has standing to appeal a decision overturning a criminal trespass conviction where the basis for the decision is that, under state law, the property owner is constitutionally obligated to permit expressive activities by members of the general public on its property.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
DECISIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	3
ARGUMENT	4
CONCLUSION	5

TABLE OF AUTHORITIES

	Page
Cases:	
PruneYard Shopping Center v. Robins, 447 U.S. 74 (1980)	2
Constitutions and Statutes:	
U.S. Const., First Amendment	2
U.S. Const., Fifth Amendment	2
U.S. Const., Fourteenth Amendment	2
28 U.S.C. § 1257(2) (1976)	2
N.J. Const., art. I, para. 6	2
N.J. Const., art. I, para. 18	2
N.J. Statutes Annotated:	
2A:170-3 (1971)	2, 3
2C:18-3 (1981)	3

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DECISIONS BELOW

The opinion of the Municipal Court of the Borough of Princeton dated October 30, 1978, is unreported. A copy is contained in the appendix to the Jurisdictional Statement, starting at JS 49a.[1] The Order of the Superior Court of New Jersey, Law Division—Criminal, dated February 20, 1979, is also unreported and a copy appears at JS 48a. No written opinion was filed by the court; but at the trial the court orally stated its opinion and adopted the Municipal Court's opinion. The portion of the February 15, 1979, trial transcript containing

[1] "JS . . . a" refers throughout to the appropriate page of the Appendix to the Jurisdictional Statement.

this statement appears in the Joint Appendix, starting at JA 2a.[2] The opinion of the Supreme Court of New Jersey, dated November 25, 1980, was reported at 84 N.J. 535, 423 A.2d 615 and is set forth at JS 1a.

JURISDICTION

In its opinion dated November 25, 1980, rehearing denied December 19, 1980 (JS 1a, 70a), the Supreme Court of New Jersey construed Article I, paragraphs 6 and 18 of the New Jersey Constitution as creating a right of access which constituted a good defense to a charge of criminal trespass. Moreover, the court held that those provisions of the state constitution, so construed, were not violative of the United States Constitution. That proposition is challenged in this appeal, as it was below. The Notice of Appeal was filed on March 10, 1981. (JS 71a). Jurisdiction of this Court to review the final judgment of the Supreme Court of New Jersey is conferred by 28 U.S.C. § 1257(2) (1976). *PruneYard Shopping Center v. Robins*, 447 U.S. 74, 79-80 (1980). Probable jurisdiction was postponed by this Court on May 18, 1981.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Relevant portions of the First, Fifth and Fourteenth Amendments to the United States Constitution, of Article I, paragraphs 6 and 18 of the New Jersey Constitution, and of New Jersey Statutes Annotated 2A:170-31 (1971) are set forth at JS 2-3.

STATEMENT OF THE CASE

On April 5, 1978, appellee Chris Schmid entered the campus of Princeton University ("Princeton") a private, not-for-profit educational institution located in the state of New Jersey. He began passing out political literature and soliciting

[2] "JA . . . a" refers throughout to the appropriate page of the Joint Appendix.

purchases of political literature. Under Princeton's then applicable rules, appellee—not being affiliated with the university—was not welcome to come onto the campus for this purpose without first obtaining official permission. Also, Princeton's practice was not to grant such permission except when the outsider requesting it was invited or sponsored by a person or group within the Princeton University community.

Since Schmid's presence and activity on the campus on April 5, 1978, was uninvited, unsponsored, and unauthorized—and since he had entered the campus *knowing* of the requirement for permission—Schmid was arrested and charged with trespassing in violation of N.J. Statutes Annotated § 2A:170-31 (1971).[3]

The State of New Jersey sought and obtained a conviction. Schmid appealed, asserting *inter alia* that he was entitled by the state constitution to leaflet and solicit on Princeton's property. Princeton, as party-intervenor, countered that such a state right of access would violate the First Amendment right of Princeton to engage in educational activity without state interference and the associated Fifth Amendment protection of Princeton's use of its property in exercise of its First Amendment rights. The state supreme court, finding and sustaining a state constitutional right of access by Schmid, reversed the conviction. A petition for rehearing was denied, and Princeton and the State of New Jersey both appealed.

SUMMARY OF ARGUMENT

The federal question raised by appellant Princeton University is substantial and should be decided by this Court. Until the Court passes upon the constitutionality of New Jersey's right-of-access law, there will be controversy regarding the enforcement and enforceability of that law and of the criminal trespass law which the State of New Jersey is responsible for enforcing.

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[3] This statute was superseded in 1979 by N.J.S.A. 2C:18-3 (1981).

ARGUMENT

Appellant Princeton, as owner and user of the property in question, has a strong and obvious interest of its own in this appeal—an interest which it is fully capable of asserting and defending here. The State of New Jersey deems it neither necessary nor appropriate to express an opinion on the merits of the respective positions of the private parties to this action. The State does wish, however, to reiterate its belief that the federal question raised by Princeton is substantial and should be decided by this Court.

In addition, the State wishes to draw the Court's attention to the desirability of an authoritative resolution of the issues presented. More situations involving persons wishing to engage in expressive activity on the property of others will surely arise in the future. Property owners may request the arrest and prosecution of leafleteers and solicitors. Leafleteers expelled from private property by self-help may seek arrest and prosecution of the property owners. Declaratory judgments or injunctive relief may be sought by one side or the other with regard to prospective entries. Until this Court passes upon the constitutionality of New Jersey's right-of-access law, there will be controversy regarding the enforcement and enforceability of that law and of the criminal trespass law which the State of New Jersey is responsible for enforcing.

CONCLUSION

For the foregoing reasons, the State of New Jersey appeals to this Court to review the judgment of the court below and decide the questions presented.

Respectfully submitted,

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